

Case No. 10

Advert Notice No E/E/T/PC3/54/2002 – Period Contract for the supply of Bolts and Nuts

This call for tenders, published in the Government Gazette on the 27th September 2002, was issued by the Contracts Department following a formal request received by the latter from Enemalta Corporation.

The estimated cost of this three year period contract was Lm 31,367 per annum.

The closing date for this call for offers was 07.11.2002.

Enemalta Corporation appointed an Adjudication Board consisting of Ing. M. Sciberras and Ing. J.D. Mizzi to analyse offers received which amounted to seven in all.

In their recommendation, the Adjudication Board stated that the offer submitted by Messrs. Ragonesi was technically the cheapest offer. However, the tenderer had given a minimum order quantity of 1000 pieces of any item. Consequently, the Board argued that were Messrs. Ragonesi to refrain from supplying quantities lower than 1000 pieces per item requested then the contract would be awarded to the next cheapest bidder.

As a matter of fact, Messrs. Ragonesi was formally contacted in regard but their reply to the Corporation was that, regrettably, their principals could not accept to supply the quantities listed in the Corporation's requirements but were constrained to logistically maintain a minimum supply of 1000 pieces per item.

Following this development, the Adjudication Board recommended the award of the contract to Messrs. Shamrock General Trading.

Messrs. Ragonesi filed a Notice of Objection on 16.06.2003 against the said award to Messrs. Shamrock General Trading.

The Public Contracts Appeals Board made up of Mr. Alfred Triganza (Chairman) and Mr. Anthony Pavia and Mr. Edwin Muscat, respectively, as members, convened a public hearing on 15.10.2003.

Also present for the hearing were:

- a. Mr. Joseph Meli (Department of Contracts)
- b. Mr. Roberto Ragonesi (Messrs. Ragonesi & Co. Ltd.)
- c. Ing. Mark Sciberras (Enemalta Corporation)
- d. Mr. Godfrey Camilleri (Enemalta Corporation)

Mr. Ragonesi stated that his firm had quoted for all the 45 items included in Enemalta Corporation's tender for the supply of various quantities of bolts and nuts for a period of 3 years. He said that from the results published on the notice board of the Department of Contracts, it was revealed that the contract was to be awarded for Lm25,078.47 C&F including customs duty and VAT to Messrs. Shamrock General Trading. According to Mr. Ragonesi, if Enemalta Corporation would have evaluated and calculated the value for the supply of all items over a period of three years, their offer would have ended up cheaper than the offer submitted by Messrs. Shamrock Genral Trading over the entire duration of the period contract.

He recalled that, during the adjudication stage, Enemalta Corporation had asked them to supply bolts and nuts as per tender quantities (for many items the quantity required was much less than 1000) because their offer was submitted on the condition that they could only accept a minimum quantity of 1000 pieces per item. He explained that they could not meet Enemalta's requirement because their principals had informed them that it would not be cost effective to produce such small orders. The reason given by their principals was that bolt making machines had a capacity of about 100 pieces per minute and that it took them about 2 to 3 hours to change the moulds of the machine for each kind of bolt and nut.

He said that there were about 23 items, whose total quantity requested would have been less than 1,000 pieces. Mr. Ragonesi stated that Messrs. Shamrock General Trading had quoted exactly for the quantities required by Enemalta Corporation while his company had given a minimum order quantity of 1000 pieces per item.

According to Mr. Ragonesi's detailed workings covering a year's projected consumption, taking into account the quantities offered by both Messrs. Ragonesi and Messrs. Shamrock General Trading, total cost of bolt and nuts amounted to \$24,364.48 and \$20,198.15 respectively. So, the latter's offer would be \$4,166.33 cheaper. However, were Messrs. Shamrock General Trading to quote for three years, their annual offer would be three times as much, which is \$60,594.44. Yet, Mr. Ragonesi claimed that had the value for the supply of all items been evaluated and calculated for a period of three years, their offer would cost \$57,252.13. Thus, after three years, if Enemalta Corporation had to order the exact quantity from Messrs. Shamrock General Trading, they would end up cheaper than their competitor by \$3,342.31. Copies of Mr. Ragonesi's workings in respect of offers submitted by Messrs. Shamrock General Trading and his company were tabled during the hearing.

Furthermore, he said that if Enemalta Corporation were to be supplied with 1,000 pieces on their first order they would need to order them only once and would even end up with extra stock.

Mr. Ragonesi contended that since this was a period tender (three years' supply), Enemalta Corporation could have easily confirmed their offer as whatever was not required could have been thrown away and the overall cost would still have been cheaper.

At this stage Mr. Ragonesi was asked by the Public Contract Appeals Board as to why his Company did not perhaps contemplate storing the goods themselves during the three year period and whatever at the end of the period would not have been required by Enemalta Corporation would have either been thrown away or else distributed locally on a commercial basis.

Mr. Ragonesi stated that his Company did not have storage facilities.

Ing. Mark Sciberras representing Enemalta Corporation stated that Ing. John Mizzi and himself recommended the adjudication of this tender. He said that they compared the quantity of items required on a yearly basis because the prices were fixed.

Mr Godfrey Camilleri calculated that, had Enemalta Corporation accepted the quantities offered by Messrs. Ragonesi, they would have ended up with a substantial amount of dead stock items. Both Enemalta Corporation's representatives stated that it was difficult to find storage space for all these items.

Mr. Camilleri exhibited two faxes regarding

- a. Enemalta Corporation's request to Messrs. Ragonesi for the Company to supply the Corporation with the required items as per tender quantities
- b. the latter's negative reply in regard

He said that the minimum order quantity of 1000 pieces of any item was not acceptable to Enemalta Corporation.

Enemalta Corporation's representatives commented that it would be difficult for them to find storage space to cover requirements covering a three-year period. However, they claimed that it would be irresponsible on their part and against clauses specified in the tender requirements, if they were to over-commit themselves on stocking quite a few items included in the list when they know '*a priori*' that there is no way that they could ever require 1000 units of particular items throughout the period of the contract.

While agreeing that if they were to hypothetically consume 1000 units of each item over the three-year period it would have been financially better for the Corporation to accept Messr. Ragonesi's offer, yet one has to be realistic and meticulously consider the likely requirements of the Corporation for each particular item on the list. For this reason, Mr. Godfrey Camilleri, while providing those present with

pertinent faxed copies, stated that the Corporation had requested Messrs. Ragonesi to supply it with items as required and not maintaining a minimum 1000 unit supply per stock item. Yet, Messrs. Ragonesi had declined to do so stating that their supplier could not meet their request due to lack of commercial viability.

Finally, the Contracts Department's representative, Mr Joseph Meli, stated that the General Contracts Committee concurred with Enemalta Corporation's recommendation on the basis of the fact that Messrs. Ragonesi's offered prices were subject to minimum orders of 1000 units per item, a condition which '*sui generis*' contravened tender conditions. Also, he quoted one of the tender conditions, which stated that '*Not all items will be ordered together but each item will be ordered as and when required. The value of each order will not be less than 10% of the total value of a year's projected consumption.*'

The Public Contracts Appeals Board, having gone through the arguments presented, both in favour and against the Contracts Committee's decision, considered that the objection raised by Messrs. Ragonesi was effectively and intrinsically unfounded and somewhat unreasonable. As a consequence the Board decided to confirm the latter's decision, namely to award the tender to Messrs. Shamrock General Trading.

Alfred R. Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

Date: 29.10.2003